IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.288 OF 2005
IN
SUMMARY SUIT NO.3315 OF 2004

Ever Plus Securities & Finance Ltd. ....Plaintiff
V/s.
Hanuman Securities Pvt.Ltd. & Ors. ....Defendants

Mr.A.Y. Bookwala with Ms.Rajni Divekar i/b Little & Co. for the Plaintiff.
Mr.N. Engineer i/b RMG Law Associates for Defendant No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 12TH DECEMBER, 2005.

P.C. :

1. Defendant Nos.2 and 3 are the Directors of Defendant No.1. They are not liable for the dues of Defendant No.1.

2. The suit is filed to recover a sum of Rs.97,50,000/- together with interest. Defendant No.1 admittedly sold on behalf of the Plaintiff 1,50,000 shares held by the Plaintiff in Saw Pipes Limited. It is admitted by Defendant No.1. Defendant No.1 issued a sale note evidencing the sale for the said sum of Rs.97,50,000/-. The liability of Defendant No.1 is thus clear. There is nothing on record that militates

against the Plaintiff’s claim in suit.

3. Moreover, the Plaintiff by the letters dated 7th May, 2002 and 2nd September, 2002 called upon the first Defendant to pay a sum of Rs.97,50,000/-. Defendant No.1 having failed to pay the said amount, the Plaintiff by its advocate’s notice date 28th March, 2003 recorded the aforesaid facts and called upon the first Defendant to at least return the said shares. This was reiterated by the Plaintiff’s advocate notice dated 30th May, 2003.

4. None of the letters were replied to. There is no dispute regarding the transaction.

5. The only defence was that the Plaintiff had by the said letters dated 28th March, 2003 and 30th May, 2003, called upon Defendant No.1 to return the shares whereas the suit is filed to recover the money. The defence is totally unfounded. By the said letters dated 7th May, 2002 and 2nd September, 2002, the Plaintiff had called upon Defendant No.1 to return the money. Moreover, the transaction had been effected. Defendant No.1 has not even taken the defence that they are bound to retain the goods. Nor have the Defendant offered t return the shares.

6. Thus as far as Defendant No.1 is concerned, there is no defence.

7. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed as prayed only against Defendant No.1.

8. Defendant Nos.2 and 3 are granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes. Defendant Nos.2 and 3 to file their written statement within four weeks from today. Discovery and Inspection to be completed within six weeks thereafter. Summons for Judgment stands disposed of accordingly.